

CONTRACT COURT REPORTER AGREEMENT

U.S. DISTRICT COURT - DISTRICT OF NEBRASKA

The U.S. District Court for the District of Nebraska has been authorized by the Administrative Office of the U.S. Courts (AO) to obtain contract court reporting services using the basic procurement procedures. A court purchase order, in conjunction with terms and conditions outlined in the Statement of Work, fulfills the contractual requirement.

STATEMENT OF WORK

C. Work Statement and Specifications

The United States District Court for the District of Nebraska has a requirement for contract court reporting services at the following location(s): Omaha, Lincoln and North Platte, Nebraska.

C.1 Introduction

In accordance with the statute, 28 U.S.C § 753(b): Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge.

In accordance with paragraph (g) of the statute: If the number of court reporters provided is insufficient to meet temporary demands and needs of the district court, the services of additional court reporters may be obtained on a contract basis.

The Director of the Administrative Office is authorized to and shall contract, without regard to section 6101(b) to (d) of title 41,¹, with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court.

C.2 Definitions

- a) Contractor - Individual/entity to whom the contract is awarded. May also be the reporter if the contractor is an individual who also reports. The contractor may have other reporters working for him/her either as employees or subcontractors. The Service Contract Act and wage determination only apply if the reporters are employees of the contractor rather than subcontractors.

¹ Title 41 was revised in 2011. Former 41 U.S.C. § 5 is now 41 U.S.C. § 6101. The reporter statute now cites the current version, as shown in the revised text.

- b) Reporter - Individual who is actually taking and producing the record. May also be the contractor (see "Contractor" above). The contractor is ultimately the responsible entity.
- c) Prime Court Reporting Experience - Reporting in the freelance field of service, in other courts, or a combination thereof (e.g., depositions, adversary proceedings before a presiding official, grand jury proceedings).
- d) Prime Realtime Court Reporting Experience - Realtime reporting in the freelance field of service, in other courts, or a combination thereof (e.g., depositions, adversary proceedings before a presiding official, grand jury proceedings).
- e) Equivalent Qualifying Examinations - Examinations that measure at the same speed and accuracy, the ability of the reporter to record and transcribe testimony or court proceedings.

C.3 Description of Services to be Performed

- a) Creation of Pool. In FY2014, and every third year thereafter, the clerk will publish on the court's Web site a solicitation for contract court reporters.
 - i) The solicitation will invite individuals and businesses to submit to the court's contracting officer by a date certain a letter detailing their qualifications to serve as contract court reporters. See C.5 for court reporter qualifications.
 - ii) All qualified individuals and businesses who both timely respond to this solicitation in the manner prescribed and sign the contract will be placed provisionally in a contract court reporter pool.
- b) Distribution of Work. Following creation of the pool, the clerk will distribute court reporter work equitably among pool members on a rotational basis.
 - i) The number of court reporters in the pool, together with the need for contract court reporters, will determine how frequently a contract court reporter receives work from the court.

C.4 Scope of Work

All requirements in Section C are considered mandatory:

- a) The estimate for contract court reporting services subject to this contract is (per year): 2 full reporting days; 4 half reporting days; and 0 overtime hours, of which realtime will be required for 2 full reporting days; 4 half reporting days; and 0 overtime hours. These are estimates only and do not obligate the Government to place orders for the amounts shown.

- b) The contractor shall maintain a staff of reporters sufficient to meet the reporter requirements stated in paragraph C.4.a above. Only those reporters approved by the court are authorized to perform reporting services; any substitutions or additions shall be in accordance with the Purchase Order Terms and Conditions (Attachment H.1). The contractor shall provide reporters who perform reporting services and transcription services in accordance with 28 U.S.C. § 753 (Attachment J.1), with the policies of the Judicial Conference of the United States as described herein, and with the terms of this contract. **The Court estimates that a minimum of 1 contract reporter and/or 1 contract realtime reporters may be required** to be available at any given time to fulfill these requirements. (Note: The Government does not guarantee any particular level of effort under this contract, nor does it guarantee that the minimum estimated number of reporters will actually be needed.) The Contractor and all reporters working under the contract shall observe, comply with, and be bound by all of the contracting officer's instructions in matters affecting the composition of the record, the public or private nature of the proceedings, the adjournment of the proceedings to other times or places, the appropriate demeanor of the reporters, and other matters of like character. The parties agree that no provision of this contract shall be construed to create an employer-employee relationship between the court and the contractor and/or the reporters.
- c) In the event that the court's total requirement at any given time for contract reporters exceeds the minimum number estimated under paragraph C.3.b above, the contracting officer will make such requirement known to the contractor. The contractor shall be under no obligation to accept such an order; if the contractor does agree to satisfy the requirement, all terms and conditions of this contract shall apply.
- d) The reporting of any proceedings already in progress at the time of award and the transcription of the record of such proceedings are outside the scope of this contract, unless the contracting officer elects to have the contractor assume responsibility for the reporting of the balance of such proceedings, from and after a date which the contracting officer may determine.

C.5 Qualifications of Stenotype Reporters Working Under the Contract

The contractor shall maintain adequate staffing of reporters who hold the following qualifications:

- a) Each reporter shall possess as a minimum qualification at least four years of prime court reporting experience, and;
- b) Each reporter shall have qualified by testing for listing on the registry of professional reporters of the National Court Reporters Association (NCRA) or have passed an equivalent qualifying examination which, at the sole discretion of the contracting officer, evinces equivalent skills. If a proposed reporter has qualified by other than National Court Reporters Association

testing, evidence of equivalent certification **MUST** be accompanied by detailed test performance criteria; minimum requirements for successful completion of the equivalent qualifying examination shall include the ability to record and transcribe 180 words per minute for literary matter, 200 words per minute for jury charge, and 225 words per minute for testimony, at 95% accuracy within 3.5 hours, and;

- c) The contractor shall provide evidence of NCRA or equivalent certification for each reporter. Equivalent certification **MUST** be accompanied by detailed test performance criteria.

C.6 Equipment

The contractor shall provide all supplies and equipment necessary to carry out the reporting (including realtime reporting) and transcription services described herein.

C.7 Statement of Work

- a) Duties of Reporters Working Under the Contract:

Qualified reporters must attend and record verbatim court proceedings. Reporters must also promptly transcribe those proceedings when requested by a judge or by any party who has agreed to pay the fees as enumerated in Section B.1.2.

The reporter shall incorporate into the record everything which any individual speaks during a proceeding unless the presiding judicial officer directs otherwise. The reporter shall never consider anything any person says to be “off the record” unless the presiding judicial officer expressly designates a portion of the proceeding in that manner. The contractor and any reporters working for the contractor shall preserve the integrity of the record at all times that the record is in their possession.

- b) Principal Period of Service of Reporters Working Under the Contract:

For orders placed under Items 101, 102, 103, and/or 101A, 102A 103A, of Section B, the contractor shall provide a reporter upon receiving a **minimum notice of 24 hours** from the Contracting Officer; (if this notice is more than notice offered under Section B.2.3, the notice stated in Section B.2.3 shall take precedence. The principal period of service is considered to be the normal hours of court operation which are **8 a.m.** to **5 p.m.** The morning session is considered to be from **8 a.m.** to **12 p.m.**, and the afternoon session is considered to be from **1 p.m.** to **5 p.m.** Reporters must be available during normal hours of court operation. Reporters shall work overtime when requested by the presiding judicial officer. Overtime shall not commence until nine (9) hours after the established starting time of the morning session shown above.

The maximum reporter rates in the District of Nebraska are identified in Attachment J.4.

c) Place of Performance and Travel:

The principal place(s) of performance are **Omaha, Lincoln, and North Platte, Nebraska**. The contractor shall receive no additional payments for expenses for transportation or subsistence incurred during travel if contract court reporter's residence is within 30 miles of the court location.

If reporting services are required at a proceeding which will take place outside the designated Place of Performance, the contracting officer will make known the requirement to the contractor. If the contractor agrees to satisfy the requirement, all terms and conditions of this contract shall apply; if the contractor is unable or unwilling to meet the requirement, such requirement shall be considered outside the scope of this contract, and the Government may proceed to procure the services of a substitute. If the contractor agrees to satisfy the requirement, the contractor shall be paid in accordance with the rates for services during the principal period of service and overtime. The time used for computing such payment shall include each day or part thereof during which the reporter assigned under the contract is traveling, including those days involving travel exclusively.

In addition to the reporting fees, the contractor shall receive reimbursement in accordance with the [travel regulations](#) contained in Volume 19 of the Guide to Judiciary Policy, and as applicable to employees of the Judicial Branch. Generally, the contractor may only be reimbursed the actual expenses of transportation when outside of a one-way commuting distance of 30 miles. Lodging and meals and incidental expenses (M&IE) may be reimbursed on an actual expense basis, not to exceed the per diem rate of the locale. All contractor vouchers for travel and subsistence reimbursement shall be itemized by type and amount of each item of expense, in accordance with the judiciary travel regulations.

C.8 Transcripts

- a) In accordance with the statute at 28 U.S.C. § 753(b): The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of the court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. The reporter shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings

and attach to the transcript his/her official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual must also promptly deliver to the clerk for the records of the court a certified copy of any transcript provided to parties or to a judge in a medium (paper or electronic) prescribed by the clerk. Following the redaction requirements under C.8.i, a reporter is required to provide a redacted transcript to the clerk of court for the records of the court.

A transcript in any case certified by the reporter or other individual designated to produce the record is deemed prima facie a correct statement of the testimony taken and of the proceedings. Only transcripts of the proceedings of the court made from the records certified by the reporter or other individual designated to produce the record are considered as official.

The original notes or other original records and the copy of the original or redacted transcript in the office of the clerk are available during clerk's office hours for inspection by any person without charge.

- b) Copyright - Transcripts produced from records of proceedings in United States courts are in the public domain and are not protected by copyright. The Contractor or reporter shall not include any statement or symbol on a transcript that would lead one to believe the transcript is protected by copyright. Because transcripts are in the public domain, they may be used, reproduced, and distributed by attorneys, parties, and the general public without limitation and without additional compensation to the contractor or reporter.
- c) Copy to the Court - The contractor shall deliver one (1) certified copy in a medium prescribed by the clerk (paper or electronic) of each transcript prepared under each transcript order to the clerk for the public records of the court, without charge, at the time of delivery to the ordering party (but not later than three (3) working days after delivery to the requesting party). Delivery shall take place upon physical receipt of the transcript by the clerk or his/her designee. The contractor shall bear sole responsibility for ensuring delivery to the court.

A transcript will be made electronically available to the public 90 days after delivery of the transcript to the clerk of court. During the 90 day period, any attorney to the case who has paid for a transcript must also be given access to the electronic record in the court's Case Management/Electronic Case Filing (CM/ECF) system, and the reporter/contractor will have to advise the clerk of court of any party who has purchased the transcript. Redacted transcripts, as delineated in section C.8.i below, must be delivered to the clerk of court within 10 calendar days from receipt of a Redaction Request from the attorneys to a case and must be delivered in a medium prescribed by the clerk.

d) Delivery classifications - Ordinary transcript must be delivered to the ordering party within thirty (30) calendar days after an order has been received and satisfactory financial arrangements have been made. The relevant rates specified under Section B.1.2 shall apply. Reporters may provide 14-day, expedited, daily, hourly, or realtime service at the request of the parties whenever possible, but are not required to do so. The time period for delivery of transcripts begins once an order has been received and satisfactory financial arrangements have been made. The delivery schedule for each of these categories is as follows:

- i) 14-Day - Within fourteen (14) calendar days.
- ii) Expedited - Within seven (7) calendar days.
- iii) Daily - Following adjournment and prior to the normal opening hour of the Court on the following morning, whether or not it actually is a court day.
- iv) Hourly - Ordered under unusual circumstances, delivered within two (2) hours.
- v) Realtime - A draft transcript produced by a certified realtime reporter (CRR) as a byproduct of realtime to be delivered electronically during the proceedings or immediately following adjournment.

e) In accordance with Rule 10(b)(1), Federal Rules of Appellate Procedure:

Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary or file a certificate stating that no transcript will be ordered. The transcript order or certificate must be in writing and a copy must be filed with the clerk of the district court within the same time period.

In accordance with Rule 10(b)(4), Federal Rules of Appellate Procedure:

At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

In accordance with Rule 11(b), Federal Rules of Appellate Procedure:

Upon receipt of a transcript order, the reporter shall acknowledge in the appropriate space on the face of the order, receipt of the order and the date the transcript will be completed and shall transmit the order to the clerk of the court of appeals. If the transcript cannot be completed within 30 days of receipt of the order, the reporter shall request an extension of time from the clerk of the court of appeals and the clerk's decision shall be entered on the docket and the parties notified. If the reporter fails to file the transcript within the time allowed, the provisions of Clause G.4. "Delinquent Transcripts," shall apply. Upon completion of the transcript, the reporter shall electronically file it (within 3 working days after delivery to the requesting party) with the clerk of the district court, and shall notify

the clerk of the court of appeals that the transcript has been completed and filed with the district court.

- f) Fees - Reporters may charge and collect fees for transcripts requested by the parties, including the United States, at the rates which are set forth in the Schedule. The contractor agrees not to add any transcript surcharges or service fees to the schedule rates. The reporter may not charge a fee for any copy of a transcript delivered to the clerk for the record of the court or for a redacted transcript delivered to the clerk of court. The reporter may require any party requesting a transcript to prepay the estimated fee in advance except transcripts that are to be paid for by the United States. The maximum rates and delivery times for original transcripts and copies approved in District of Nebraska are identified in Attachment J.3. The court shall have no liability to the contractor for payment of transcript fees for transcripts ordered by private parties.

Postage costs are considered an ordinary business expense; therefore, the contractor may not charge for ordinary postage. However, when the party requests accelerated delivery, the contractor may bill the party for the difference between ordinary postage costs and the cost for expedited delivery.

In multi-defendant cases involving Criminal Justice Act (CJA) defendants, the contractor shall produce no more than one transcript on behalf of CJA defendants. The appointed counsel or the clerk of court will ordinarily arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved; this policy does not preclude the furnishing of duplication services by the contractor or the reporter at the commercially competitive rate. In individual cases involving requests for accelerated (14-day, expedited, daily, or hourly) transcript services, the court may grant an exception to this policy based upon a finding that application of the policy will unreasonably impede the delivery of accelerated transcripts to persons proceeding under the CJA. Such finding shall be reflected on the transcript voucher.

Apportioning the total cost of accelerated transcript services equally among parties is prohibited unless approved in advance by the court. In those cases where accelerated transcript services are provided, the party from whom the request originated shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the CJA, the CJA counsel shall be entitled to a copy at the regular copy rate (see Attachment J.3). No other fees may be charged, except those allowed under this contract.

The contractor is required to certify on each invoice that the fee charged and the page format used conform to the requirements of this contract and to the regulations of the Judicial Conference. The certification should include the following: "I certify that the transcript fees charged and page

format used comply with the requirements of this court and the Judicial Conference of the United States.”

There are sanctions for overcharging parties or the court for transcript. Those sanctions may include offsets against future government payments, termination of the contract, and/or other available legal remedies.

- g) Format - The Judicial Conference prescribes transcript format standards in order to assure that each party is treated equally throughout the country. It is mandatory that these format requirements are followed. —The maximum per-page transcript rates are based on a strict adherence to the prescribed format. A copy of Volume 6, Chapter 5, § 520, *Guide to Judiciary Policy*, is at Attachment J.7.
- h) Report of Orders Received - The contractor may be required to provide to the contracting officer records and reports relating to the type and amount of transcripts ordered and produced and fees charged in accordance with the following schedule: ____ n/a ____.
- i) Redaction of Transcripts - In order for the clerk of court to post the transcript on the court’s electronic public access system, the parties to the proceeding will have to consider whether it is necessary to request a redaction of any personal identifiers. If redaction is necessary, an attorney must file a Notice of Intent to Redact with the clerk within seven calendar days of the certified transcript being delivered to the clerk of court; the attorney then has 21 calendar days, from the delivery of the certified transcript to the clerk of court, to specifically submit a Redaction Request noting the page numbers and the line numbers where redaction is required. The reporter has 10 calendar days from receipt of a Redaction Request from the attorneys to a case to redact the transcript and deliver the redacted transcript to the clerk of court in the electronic medium prescribed by the clerk.

The following personal identifiers may be redacted by a reporter upon the request of an attorney to a case and without a court order:

- 1) Social Security numbers (or taxpayer identification numbers) to the last four digits;
- 2) financial account numbers to the last four digits;
- 3) dates of birth;
- 4) individuals known to be minor children to the initials; and
- 5) in criminal cases, any home addresses stated in the court to the city and state.

All other requests for redaction of material in a transcript must be submitted by an attorney to the case to the judge. Upon approval of the judge, the reporter may need to redact additional transcript language. The reporter/contractor does not have a responsibility to identify personal identifiers in a transcript; that is the responsibility of the attorneys to the case.

To manually redact a transcript, the reporter will place an “x” in the space of each redacted character; or, in the alternative, software that provides for redaction may be used as long as the page and line integrity from the original transcript is maintained in the redacted transcript. The title page of the transcript should indicate that it is a redacted transcript immediately below the case caption and before the Volume number and the name and title of the Judge. A notation of “REDACTED TRANSCRIPT” should be inserted on a blank line on the title page, and care should be taken to ensure that the addition of this text does not cause changes to the length of the title page. Also, at the end of the transcript, and without causing “page roll over” (a smaller font may be used) the redacted transcript should be certified by the court reporter/transcriber stating: “I (we) certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court on dy/mo/year, and incorporating redactions of personal identifiers requested by the following attorneys of record: _____ in accordance with Judicial Conference policy. Redacted characters appear as an “x” (or a black box) in the transcript.”

There is no requirement that any of the parties to the case purchase or be provided with a copy of any redacted transcripts. The parties to the case shall not be charged for the redacted transcript provided to the clerk of court. The parties to the case may only be charged for a copy of a redacted transcript if they specifically request a copy of the redacted transcript.

C.9 Filing of Records by Reporters Working Under this Contract

- a) Filing - Reporters must certify and file promptly with the clerk of court all original shorthand notes and other original records of proceedings the reporter has recorded, identifying in the certification the court in which the proceedings were conducted as well as all other information in accordance with Section C.10.
- b) Title - Title to the record of any proceeding which a reporter reports under this contract shall vest in the court at the time of creation. Such title includes title to the medium in which the reporter records the proceedings, except if electronic sound recordings are used for back-up purposes, they shall remain the property of the reporter unless the contracting officer determines the principal record of the proceedings is defective.
- c) Notes and records - If a transcript is ordered, the original shorthand notes or records shall be submitted to the clerk of court within 90 days after the transcript is delivered to the requesting parties. If transcript is not ordered, the original shorthand notes and other original records shall be delivered to the clerk of court within 90 days of the proceeding or upon the expiration of the contract, whichever occurs sooner. The reporter shall also file with the clerk

of court a certified transcript or an electronic sound recording of all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases. A transcript or an electronic recording shall be filed within 30 days of the close of the proceeding.

If a transcript is ordered after the original shorthand notes have been filed with the clerk of court, the contracting officer will make the notes available to the contractor for transcription. The original shorthand notes shall be returned by the contractor to the contracting officer within 90 days after the transcript is delivered to the requesting parties.

Even after expiration of the contract, the contractor remains responsible for the transcription of the record if ordered by the parties or the court at the maximum prices authorized by the Judicial Conference at that time, for the filing of a certified copy of the transcript with the clerk, and for the filing of redacted transcripts with the clerk, if required.

C.10 Packaging and Marking

- a) The reporter shall certify and mark the original notes and other original records with the following information:

“In accordance with 28 U.S.C. § 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the District of Nebraska before _____ (Judicial Officer) on _____ (Date) by _____ (Signature of Reporter).”

- b) When mailing is requested, packaging of transcripts shall be in accordance with best commercial practices. The contractor shall pack to ensure carrier acceptance and to ensure safe delivery.
- c) The contractor shall clearly mark all packages with the legend “Transcript of Proceedings.” All packages (delivered by any means) shall bear the name, address, and title of the person to whom it is to be delivered, as well as the name and return address of the sender. Failure to do so may constitute grounds for refusal of delivery, with any resulting delinquency being the responsibility of the contractor. The contractor or reporter may not include any statement or symbol on a transcript that would lead one to believe the transcript is protected by copyright.